

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DANNELL L. SIMMONS

Plaintiff,

v.

EARL MAY SEED AND NURSERY, L.C.

Defendant.

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Case No.: _____

**NOTICE OF AND PETITION FOR
REMOVAL**

Defendant Earl May Seed and Nursery, L.C., by counsel, hereby files and serves this Notice of and Petition for Removal, to remove this action from the District Court of Hall County, Nebraska, to this Court, pursuant to 28 U.S.C. §§ 1441 and 1446. In support of this removal, Defendant states as follows:

BACKGROUND

1. On January 5, 2016, Plaintiff Dannel Simmons (“Plaintiff”) commenced this action in the District Court of Hall County, Nebraska by filing a complaint, Case No. CI 16-015 (the “State Court Action”). A true and accurate copy of the State Court Action is attached as **EXHIBIT A** in accordance with 28 U.S.C. § 1446(a).

TIMELY REMOVAL

2. On January 11, 2016, Plaintiff served Defendant with a copy of the Complaint. Defendant has not filed any pleadings in the State Court Action, and the time period under 28 U.S.C. §1446(b) for Defendant to file this Notice of Removal has not expired.

REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

3. This action is being removed on the basis of federal question jurisdiction and the ground that this Court has original jurisdiction over the claim. *See* 42 U.S.C. §§ 2000e & 12101, *et seq.*; 28 U.S.C § 1331. Pursuant to 28 U.S.C. 1367(a), if a civil action includes a claim arising

under federal law and a claim arising under state law, the district court shall have jurisdiction over all the claims so related as to form part of the same case or controversy.

5. In the Complaint, Plaintiff seeks damages for Defendant's alleged violation of the Nebraska Fair Employment Practice Act, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act. Plaintiff's case presents a question of federal law. Therefore, this court has original jurisdiction over the matter and removal is proper under the federal question jurisdiction of this court. 28 U.S. Code §§ 1331 & 1367(a).

VENUE

6. Pursuant to 28 U.S.C. § 1391(b) Venue is proper in the United States District Court for the District of Nebraska in Lincoln, Nebraska, because the United States District Court for the District of Nebraska encompasses Hall County, Nebraska.

6. Defendant shall give written notice of this removal to Plaintiff and will file an appropriate Notice of Filing Notice of Removal with the District Court of Hall County, Nebraska, as required by 28 U.S.C. §1446(d)

7. No admission of fact, law, or liability is intended by this Notice of Removal, and Defendant expressly preserves any and all of their defenses, denials, and/or objections.

WHEREFORE, Defendant removes the State Court Action from the District Court of Hall County, Nebraska to this Court, so that all further proceedings in this action be held before this Court.

DATED this 14th day of January, 2016.

Respectfully submitted,

EARL MAY SEED AND NURSERY, L.C.,
Defendant.

/s/ Jacqueline F. Langland

Christopher E. Hoyme, #18993

Jacqueline F. Langland, #25605

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

Tanya J. Hansen
Leininger, Smith, Johnson, Baack, Placzek & Allen
104 North Wheeler
PO Box 790
Grand Island, Nebraska 68802-0790

/s/ Jacqueline F. Langland